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PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

Regen

1 AN ACT *to repeal and recreate* 779.48 (title); and *to create* 779.485 of the
2 statutes; **relating to:** liens for metal fabrication tool builders and metal parts
3 manufacturers.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 779.48 (title) of the statutes is repealed and recreated to read:
5 **779.48 (title) Enforcement.**
6 **SECTION 2.** 779.485 of the statutes is created to read:
7 **779.485 Special tools. (1) DEFINITIONS.** In this section:
8 (a) "Customer" means a person who does any of the following:
9 1. Causes a special tool builder to design, develop, manufacture, assemble, or
10 otherwise make a special tool.

1 2. Orders a product from a manufacturer that is produced with a special tool
2 or causes a manufacturer to use a special tool.

3 (b) "Intellectual property" means a design, program, or process.

4 (c) "Manufacturer" means a person who uses a special tool as part of the
5 person's manufacturing process.

6 (d) "Manufacturers' lien" means a lien described in sub. (3) (b).

7 (e) "Special tool" means a tool, die, jig, gauge, gauging fixture, metal casting,
8 pattern, forging, machinery, ferrous or nonferrous machine part, or intellectual
9 property used for the purpose of designing, developing, manufacturing, assembling,
10 or fabricating a metal part.

11 (f) "Special tool builder" means a person who designs, develops, manufactures,
12 fabricates, or assembles a special tool.

13 (g) "Special tool builders' lien" means a lien described in sub. (2) (a) 1.

14 **(2) SPECIAL TOOL BUILDERS.** (a) *Lien.* 1. A special tool builder who does all of
15 the following has a lien on a special tool in the amount that a customer or
16 manufacturer owes the special tool builder for designing, developing,
17 manufacturing, fabricating, assembling, repairing, or modifying the special tool:

18 a. Permanently records on the special tool the special tool builder's name, street
19 address, city, and state.

20 b. Files a financing statement for the special tool under subch. V of ch. 409.

21 2. A special tool builders' lien attaches and is perfected on the date that both
22 of the requirements specified in subd. 1. a. and b. are satisfied.

23 3. A special tool builder retains a special tool builders' lien even if the special
24 tool builder does not have physical possession of the special tool for which the lien
25 is claimed.

1 4. A special tool builders' lien remains valid until the first of any of the following
2 occurs:

3 a. The customer or manufacturer pays the special tool builder the amount for
4 which the special tool builders' lien is claimed.

5 b. The customer receives a verified statement from the manufacturer that the
6 manufacturer has paid the amount for which the special tool builders' lien is claimed.

7 c. The manufacturer receives a verified statement from the customer that the
8 customer has paid the amount for which the special tool builders' lien is claimed.

9 **b. d.** The financing statement is terminated.

10 (b) *Priority.* An attached and perfected special tool builders' lien has priority
11 over any other lien that subsequently attaches to the special tool.

12 (c) *Enforcement.* ^(b) A special tool builder may not enforce a special tool builders'
13 lien unless the builder provides notice in writing to the customer and manufacturer, ^{or both}

14 delivered personally or by registered mail, return receipt requested, to the
15 last-known address of the customer and manufacturer, ^{or both} and shall state

16 is claiming a lien for the amount that customer or manufacturer owes the special tool
17 builder for designing, developing, manufacturing, fabricating, assembling,

18 repairing, or modifying the special tool and that the builder demands payment for
19 the amount. ^{Except as provided in subdo 203} If the special tool builder is not paid the amount claimed within 90 days

20 after either the customer or ^{if applicable,} the manufacturer receives the notice, whichever is later,
21 the builder has the right to possession of the special tool and the builder may enforce

22 the right by any available judicial procedure or by ~~doing any of the following:~~

23 ⁽¹¹⁾ ~~M.~~ Taking possession of the special tool without judicial process, but only if the
24 taking is done without breach of the peace.

INSERT
3-13

INSERT
3-24

1 2. Except as provided in sub. (4), selling the special tool at public auction as
2 provided in par. (d).

3 (d) *Public auction.* 1. A special tool builder may not sell a special tool at public
4 auction unless the builder has provided, by registered mail, return receipt requested,
5 the customer, the manufacturer, and any person who has perfected by filing a
6 security interest in the special tool, a notice that includes all of the following:

7 a. A statement that the special tool builder intends to sell the special tool no
8 sooner than 60 days after receipt of the notice.

9 b. A description of the special tool.

10 c. The last-known location of the special tool.

11 d. The time and place of the public auction.

12 e. An itemized statement of the amount for which the special tool builders' lien
13 is claimed.

14 f. A statement that the manufacturer or customer accepted the special tool and
15 did not subsequently reject the acceptance.

16 2. Except as provided in subd. 3., a special tool builder may sell the special tool
17 at public auction no sooner than 60 days after the customer's, manufacturer's, or
18 other person's receipt of the notice specified in subd. 1., whichever is later, except
19 that, if the postal service returns any of the notices as undeliverable, the special tool
20 builder may sell the special tool no sooner than 60 days after the special tool builder
21 publishes, under ch. 985, a class 1 notice of the intended sale in a newspaper of
22 general circulation in the place where the special tool is last known to be located and
23 the place of the last-known address of any person for which the postal service returns
24 a notice as undeliverable. A notice published under this subdivision shall include the
25 information specified in subd. 1.

1 3. If a customer or manufacturer disagrees with the statement specified in
2 subd. 1. f., the customer or manufacturer may notify the special tool builder of the
3 disagreement in writing by registered mail, return receipt requested. If a special tool
4 builder receives a notice under this subdivision before the date of the public auction,
5 the special tool builder may not sell the special tool at public auction until the
6 disagreement is resolved.

7 (e) *Proceeds*. If a sale of a special tool under par. (d) is for a sum greater than
8 the amount of the special tool builders' lien, the proceeds shall first be paid to the
9 special tool builder in an amount necessary to extinguish the lien and the remaining
10 proceeds shall be paid to the customer.

11 **(3) MANUFACTURERS.** (a) *Transfer of interest*. 1. Except as provided in par. (b),
12 unless otherwise agreed by a customer and manufacturer in writing, all rights, title,
13 and interest of a customer in a special tool that a manufacturer has used to produce
14 parts ordered by the customer or that the customer has caused a manufacturer to use
15 are transferred to the manufacturer for the purpose of destroying the special tool, if
16 all of the following are satisfied:

17 a. The special tool has been in the possession of the manufacturer during the
18 one-year period beginning after the manufacturer's last use of the special tool.

19 b. The customer has not claimed possession of the special tool before the
20 expiration of the one-year period specified in subd. 1. a.

21 c. After the expiration of the one-year period specified in subd. 1. a., the
22 manufacturer provides written notice by registered mail, return receipt requested,
23 to an address designated in writing by the customer or, if the customer has made no
24 such designation, to the customer's last-known address, that indicates that the
25 manufacturer intends to terminate the customer's rights, title, and interest in the

1 special tool and transfer those rights, title, and interest to the manufacturer as
2 provided in this paragraph.

3 d. The customer has not, within 120 days after the date that the manufacturer
4 receives the return receipt of notice specified in subd. 1. c., claimed possession of the
5 special tool or agreed to other arrangements with the manufacturer for storage of the
6 special tool.

7 2. The one-year period specified in subd. 1. a. applies retroactively to special
8 tools last used before the effective date of this subdivision [revisor inserts date].

9 3. This paragraph does not apply to a special tool that is titled to, and in the
10 possession of, a manufacturer. This paragraph may not be construed to grant a
11 customer any right, title, or interest in a special tool.

12 (b) *Lien*. A manufacturer has a lien on any special tool in the manufacturer's
13 possession belonging to a customer for the amount due the manufacturer from the
14 customer for ~~special~~ work performed with the special tool or for making or improving
15 the special tool. A manufacturer may retain possession of the special tool until the
16 amount due is paid.

17 (c) *Enforcement*. ^(b) A manufacturer may not enforce a manufacturers' lien unless
18 the manufacturer provides notice in writing to the customer, delivered personally or
19 by registered mail to the last-known address of the customer, that states that the
20 manufacturer is claiming a lien for the amount due described in par. (b). If the
21 manufacturer is not paid the amount due within 90 days after the customer receives
22 the notice, and if the manufacturer is still in possession of the special tool, the
23 manufacturer may ~~except as provided in sub. (4)~~ sell the special tool at public
24 auction under par. (d).

INSERT 6-4

Except as provided
in subd. 20and
par. (f)INSERT
6-24

1 (d) *Public auction.* 1. A manufacturer may not sell a special tool at public
2 auction unless the manufacturer has provided, by registered mail, return receipt
3 requested, the customer and any other person, including a special tool builder, who
4 has perfected by filing a security interest in the special tool, a notice that includes
5 all of the following:

6 a. A statement that the manufacturer intends to sell the special tool no sooner
7 than 60 days after receipt of the notice.

8 b. A description of the special tool.

9 c. The time and place of the public auction.

10 d. An itemized statement of the amount for which the manufacturers' lien is
11 claimed.

12 e. A statement that any product produced by the manufacturer with the special
13 tool complies with the quality and quantity ordered by the customer.

14 2. Except as provided in subd. 3., a manufacturer may sell a special tool at
15 public auction no sooner than 60 days after the customer's or other person's receipt
16 of the notice specified in subd. 1., whichever is later, except that, if the postal service
17 returns any of the notices as undeliverable, the manufacturer may sell the special
18 tool no sooner than 60 days after the manufacturer publishes, under ch. 985, a class
19 1 notice of the intended sale, that includes the information specified in subd. 1., in
20 a newspaper of general circulation in the place where the manufacturer is holding
21 the special tool for sale, in the place of the customer's last-known address, and in the
22 place of the other person's last-known address.

23 3. If a customer disagrees with the statement specified in subd. 1. e. that is
24 included in a notice, the customer may notify the manufacturer of the disagreement
25 in writing by registered mail, return receipt requested. If a manufacturer receives

1 a notification under this subdivision before the date of the public auction, the
2 manufacturer may not sell the special tool at public auction until after the
3 disagreement is resolved.

4 (e) *Proceeds*. The proceeds of a sale of a special tool under par. (d) shall, if
5 applicable, first be paid to a prior lienholder who has perfected a lien in an amount
6 sufficient to extinguish that lien. Any excess proceeds shall next be paid to the
7 manufacturer in an amount sufficient to extinguish the manufacturers' lien. Any
8 remainder shall be paid to the customer. *(P. 5 ital. No CS)*

9 *(4) FEDERAL LAW* A special tool builder or manufacturer may not sell a special
10 tool under ~~sub. (2) (d) or (3) (d)~~ *para (d)* if the sale would violate the rights of a manufacturer
11 or customer under federal bankruptcy, patent, or copyright law.

12 (END)

(f)

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0927/P2ins
MDK:.....

INSERT 3-13:

or both¹ that owes the builder the amount for which the special tool builder's¹ lien is claimed. The notice shall be

INSERT 3-24:

2. If the postal service returns any notice required under subd. 1. as undeliverable, the special tool builder may enforce the right to possession under subd. 1. no sooner than 60 days after the special tool builder publishes, under ch. 985, a class¹ notice of the intended enforcement of the right to possession in a newspaper of general circulation in the place where the special tool is last known to be located and in the place of the last-known address of any person for which the postal service returns a notice as undeliverable.

INSERT 6-4:

or within 120 days after the customer provides notice if no return receipt is received within that period

INSERT 6-24:

2. Except as provided in par. (f), if the postal service returns a notice under subd. 1. as undeliverable and if the manufacturer is still in possession of the special tool, the manufacturer may sell the special tool at public auction under par. (d) no sooner than 90 days after the special tool builder publishes, under ch. 985, a class¹ notice of the sale in a newspaper of general circulation in the place of the last-known address of the customer.

Kunkel, Mark

From: Nick George [nickgeorge@wmc.org]
Sent: Tuesday, February 01, 2005 3:15 PM
To: Matthews, Pam; Kunkel, Mark
Subject: T&D response.doc

Hi Pam and Mark.

Attached is a memo regarding tool lien questions. Please let me know when the three of us can get together. Thanks.

Nick George
 WMc

To: Mark Kunkel, Wisconsin Legislative Reference Bureau
 Pam Matthews, Office of Representative Jeskewitz

From: Nick George, WMC

Date: January 31, 2005


Re: Special Tools Lien Law Draft

The Government Relations Committee of the Tool & Die Machining Association of Wisconsin recently met to review Mark's questions regarding LRB-0927/P1, relating to special tools lien laws. Below are some responses and questions. I've put the questions in bold.

Can we get together to review the questions further? Is there a time that works best for you? I assume in the LRB offices or the Representative's offices. Please let me know. I can be contacted at 608-661-6946 or by return email.

1. Manufacturer is OK.
2. This is OK.
3. This should be kept as broad as possible because many customers don't want a stamp or ID on the product. Also, most of this stuff can be identified via blue print or purchase order.
4. Yes, this should be no problem.
5. This looks Okay to us. Should we be concerned? - ?
6. Yes this is Okay.
7. A canceled check should take care of this. We don't see a problem. At this point we see a potential problem. **Do we need to clarify the difference in this section between a manufacturer and a customer?** It gets very confusing. ?
8. This shouldn't be a problem. **We don't want any more people involved than necessary. How does the construction industry handle it? Does this take care of the situation when a 3rd party buys the assets (p3, sec.4)?**
9. It is unclear why this section is needed. **Can "special tool builder" be taken out? Is it needed here?**
10. ~~This scenario is hard to believe. We should discuss.~~
11. We think this should be taken out.
12. **Is transfer to manufacturer good?** Need to clarify.
13. One year is fine.
14. **Any suggestions on this one?**
15. **Why would we want to do this?** We should discuss.
16. OK let us know.

Question: Does this law apply to only new work or will it also apply to rework? We assume rework

To: 

Page 2 of 2

also. Please let us know.

02/01/2005

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0927/P1dn
MDK:wlj:rs

December 21, 2004

Representative Jeskewitz:

This preliminary draft is based on the Michigan special tools lien law. Because I made numerous changes to the structure and wording of the Michigan law, please review the draft to make sure it achieves your intent. In addition, please note the following issues regarding this draft. After we resolve these issues, I will prepare a version of the draft that may be introduced.

1. I used the term "manufacturer" instead of "end user" because "manufacturer" is more descriptive. In addition, an article about the Michigan law indicates that the term "end user" has caused confusion in Michigan, as that term has the same meaning as "customer" in the metal fabrication industry. *OK*
2. There is no need to include the definition of "person" that is included in the Michigan law because, under Wisconsin law, "person" includes business entities. See s. 990.01 (26), stats. *OK*
3. One requirement for a special tool builders' lien is to "permanently record" certain information on the tool. The draft, like the Michigan law, does not specify how one must permanently record this information. Is that okay? *Assume - OK?*
4. Another requirement for a special tool builders' lien is to file a financing statement under Wisconsin's version of the Uniform Commercial Code. Under the UCC, a filer must identify the debtor, which would be the customer or manufacturer. Of course, this assumes that the builder knows the identity of the customer or manufacturer. Is that okay? *OK*
5. This draft eliminates the Michigan law's references to actual and constructive notice of a special tool builders' lien. I think this draft accomplishes the same thing by referring instead to the attachment and perfection of the special tool builders' lien.
6. Under the Michigan law, a special tool builders' lien is effective until a certain action occurs. One of the actions is the customer's receipt of a verified statement from the manufacturer (i.e., the end user under Michigan law) that the manufacturer has paid the amount for which the special tool builders' lien is claimed. However, the Michigan law does not address the possibility of a manufacturer receiving notice from a customer that the customer has paid the amount claimed. I included such a provision in proposed s. 779.485 (2) (a) 4. c. Is it okay? *OK*

7. On a related point, what if the customer or manufacturer states that the claim is paid, but the special tool builder disputes that statement? The draft (and the Michigan law) do not address this scenario.

8. The draft requires the special tool builder to provide notice of enforcement of a special tool builders' lien to both the customer and manufacturer. This assumes that the builder knows who both the customer and manufacturer are. Is this a problem? In addition, should the special tool builder always be required to give notice to both of them? Is there a scenario under which it would be appropriate to provide notice to only one of them?

9. Under this draft, if a special tool builder or manufacturer is required to publish a notice in a newspaper before a public auction, the special tool builder or manufacturer may not sell the special tool at the auction until 60 days after the notice. See proposed s. 779.485 (2) (d) 2. and (3) (d) 2. The Michigan law did not address this issue, but I think it is necessary to specify when a sale may take place after publication of a notice.

10. Under proposed s. 779.485 (2) (d) 3. and (3) (d) 3., as in the Michigan law, if there is a disagreement over acceptance of a special tool or of the products produced with a special tool, a public auction cannot be held until the disagreement is resolved. Note that the draft and the Michigan law do not address how to resolve such disagreements. In effect, a person could block the sale by refusing to resolve the disagreement. Is that okay?

11. Proposed s. 779.485 (2) (e) and (3) (e), like the Michigan law, require excess proceeds of a sale to be given to a customer. However, I'm not sure why the customer should be given the proceeds.

12. In proposed s. 779.485 (3) (a) 1., I made it clear that the interest "of a customer in special a tool" is transferred to a manufacturer. I think this reference to the customer's interest is implied, but not stated, in the Michigan law.

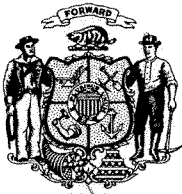
13. I changed the three-year waiting period for the transfer of interest in a special tool to a one-year waiting period. See proposed s. 779.485 (3) (a) 1. a. Is this consistent with your intent? *OK*

14. Proposed s. 779.485 (2) (c) (intro.) and (3) (a) 1. d. and (c), like the Michigan law, do not address what happens if a notice is returned as undeliverable.

15. In proposed s. 779.485 (3) (d) 1., I made it clear that the manufacturer must notify a special tool builder who has filed a financing statement for a special tool builders' lien. Is that okay?

16. I am researching the issue of how this draft would apply to transactions and parties that involve other states. (The Michigan law does not address this issue.) I will resolve this issue for the next version of the draft.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0927/P2

MDK:wlj:rs

1

D-NOTE

Today

RM
for
Green
pen

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERT
1A

and destruction of
metal fabrication tools

Regen

1 AN ACT *to repeal and recreate* 779.48 (title); and *to create* 779.485 of the
2 statutes; **relating to:** liens for metal fabrication tool builders and metal parts
3 manufacturers;

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 779.48 (title) of the statutes is repealed and recreated to read:

5 **779.48 (title) Enforcement.**

6 SECTION 2. 779.485 of the statutes is created to read:

7 **779.485 Special tools. (1) DEFINITIONS.** In this section:

8 (a) "Customer" means a person who does any of the following:

9 1. Causes a special tool builder to design, develop, manufacture, assemble, or

10 otherwise make a special tool.

2. Orders a product from a manufacturer that is produced with a special tool or causes a manufacturer to use a special tool.

(b) "Intellectual property" means a design, program, or process.

(c) "Manufacturer" means a person who uses a special tool as part of the person's manufacturing process.

(d) "Manufacturers' lien" means a lien described in sub. (3) (b).

(e) "Special tool" means a tool, die, jig, gauge, gauging fixture, metal casting, pattern, forging, machinery, ferrous or nonferrous machine part, or intellectual property used for the purpose of designing, developing, manufacturing, assembling, or fabricating a metal part.

(f) "Special tool builder" means a person who designs, develops, manufactures, fabricates, or assembles a special tool.

(g) "Special tool builders' lien" means a lien described in sub. (2) (a) 1.

(2) SPECIAL TOOL BUILDERS. (a) *Lien.* 1. A special tool builder who does all of the following has a lien on a special tool in the amount that a customer or manufacturer owes the special tool builder for designing, developing, manufacturing, fabricating, assembling, repairing, or modifying the special tool:

a. Permanently records on the special tool the special tool builder's name, street address, city, and state.

b. Files a financing statement for the special tool under subch. V of ch. 409.

2. A special tool builders' lien attaches and is perfected on the date that both of the requirements specified in subd. 1. a. and b. are satisfied.

3. A special tool builder retains a special tool builders' lien even if the special tool builder does not have physical possession of the special tool for which the lien is claimed.

1 4. A special tool builders' lien remains valid until the first of any of the following
2 occurs:

3 a. The customer or manufacturer pays the special tool builder the amount for
4 which the special tool builders' lien is claimed.

5 b. The financing statement is terminated.

6 (b) *Priority.* An attached and perfected special tool builders' lien has priority
7 over any other lien that subsequently attaches to the special tool.

8 (c) *Enforcement.* 1. A special tool builder may not enforce a special tool
9 builders' lien unless the builder provides notice in writing to the customer,
10 manufacturer, or both that owes the builder the amount for which the special tool
11 builders' lien is claimed. The notice shall be delivered personally or by registered
12 mail, return receipt requested, to the last-known address of the customer,
13 manufacturer, or both and shall state that the builder is claiming a lien for the
14 amount that customer, manufacturer, or both owes the special tool builder for
15 designing, developing, manufacturing, fabricating, assembling, repairing, or
16 modifying the special tool and that the builder demands payment for the amount.
17 Except as provided in subd. 2., if the special tool builder is not paid the amount
18 claimed within 90 days after either the customer or, if applicable, the manufacturer
19 receives the notice, whichever is later, the builder has the right to possession of the
20 special tool and the builder may enforce the right by any available judicial procedure
21 or by taking possession of the special tool without judicial process, but only if the
22 taking is done without breach of the peace.

23 2. If the postal service returns any notice required under subd. 1. as
24 undeliverable, the special tool builder may enforce the right to possession under
25 subd. 1. no sooner than 60 days after the special tool builder publishes, under ch. 985,

90

1 a class 1 notice of the intended enforcement of the right to possession in a newspaper
2 of general circulation in the place where the special tool is last known to be located
3 and in the place of the last-known address of any person for which the postal service
4 returns a notice as undeliverable.

5 (3) MANUFACTURERS. (a) *Transfer of interest.* 1. ~~Except as provided in par. (b).~~

6 unless otherwise agreed by a customer and manufacturer in writing, all rights, title,
7 and interest of a customer in a special tool that a manufacturer has used to produce
8 parts ordered by the customer or that the customer has caused a manufacturer to use
9 are transferred to the manufacturer for the purpose of destroying the special tool, if
10 all of the following are satisfied:

11 a. The special tool has been in the possession of the manufacturer during the
12 one-year period beginning after the manufacturer's last use of the special tool.

13 b. The customer has not claimed possession of the special tool before the
14 expiration of the one-year period specified in subd. 1. a.

15 c. After the expiration of the one-year period specified in subd. 1. a., the
16 manufacturer provides written notice by registered mail, return receipt requested,
17 to an address designated in writing by the customer or, if the customer has made no
18 such designation, to the customer's last-known address, that indicates that the
19 manufacturer intends to terminate the customer's rights, title, and interest in the
20 special tool and transfer those rights, title, and interest to the manufacturer as
21 provided in this paragraph.

22 d. The customer has not, within 120 days after the date that the manufacturer
23 receives the return receipt of notice specified in subd. 1. c. or within 120 days after
24 the customer provides notice if no return receipt is received within that period,

1 claimed possession of the special tool or agreed to other arrangements with the
2 manufacturer for storage of the special tool.

3 2. The one-year period specified in subd. 1. a. applies retroactively to special
4 tools last used before the effective date of this subdivision [revisor inserts date].

5 3. This paragraph does not apply to a special tool that is titled to, and in the
6 possession of, a manufacturer. This paragraph may not be construed to grant a
7 customer any right, title, or interest in a special tool.

8 (b) *Lien*. A manufacturer has a lien on any special tool in the manufacturer's
9 possession belonging to a customer for the amount due the manufacturer from the
10 customer for work performed with the special tool or for making or improving the
11 special tool. A manufacturer may retain possession of the special tool until the
12 amount due is paid.

13 (c) *Enforcement*. 1. A manufacturer may not enforce a manufacturers' lien
14 unless the manufacturer provides notice in writing to the customer, delivered
15 personally or by registered mail to the last-known address of the customer, that
16 states that the manufacturer is claiming a lien for the amount due described in par.

17 (b). Except as provided in subd. 2, ~~and par. (f)~~, if the manufacturer is not paid the
18 amount due within 90 days after the customer receives the notice, and if the
19 manufacturer is still in possession of the special tool, the manufacturer may sell the
20 special tool at public auction under par. (d).

21 2. ~~Except as provided in par. (f)~~, if the postal service returns a notice under
22 subd. 1. as undeliverable and if the manufacturer is still in possession of the special
23 tool, the manufacturer may sell the special tool at public auction under par. (d) no
24 sooner than 90 days after the special tool builder publishes, under ch. 985, a class

1 1 notice of the sale in a newspaper of general circulation in the place of the
2 last-known address of the customer.

3 (d) *Public auction.* 1. A manufacturer may not sell a special tool at public
4 auction unless the manufacturer has provided, by registered mail, return receipt
5 requested, the customer and any other person, including a special tool builder, who
6 has perfected by filing a security interest in the special tool, a notice that includes
7 all of the following:

8 a. A statement that the manufacturer intends to sell the special tool no sooner
9 than 60 days after receipt of the notice.

10 b. A description of the special tool.

11 c. The time and place of the public auction.

12 d. An itemized statement of the amount for which the manufacturers' lien is
13 claimed.

14 e. A statement that any product produced by the manufacturer with the special
15 tool complies with the quality and quantity ordered by the customer.

16 2. Except as provided in subd. 3., a manufacturer may sell a special tool at
17 public auction no sooner than 60 days after the customer's or other person's receipt
18 of the notice specified in subd. 1., whichever is later, except that, if the postal service
19 returns any of the notices as undeliverable, the manufacturer may sell the special
20 tool no sooner than 60 days after the manufacturer publishes, under ch. 985, a class
21 1 notice of the intended sale, that includes the information specified in subd. 1., in
22 a newspaper of general circulation in the place where the manufacturer is holding
23 the special tool for sale, in the place of the customer's last-known address, and in the
24 place of the other person's last-known address.

3. If a customer disagrees with the statement specified in subd. 1. e. that is included in a notice, the customer may notify the manufacturer of the disagreement in writing by registered mail, return receipt requested. If a manufacturer receives a notification under this subdivision before the date of the public auction, the manufacturer may not sell the special tool at public auction until after the disagreement is resolved.

(e) *Proceeds.* The proceeds of a sale of a special tool under par. (d) shall, if applicable, first be paid to a prior lienholder who has perfected a lien in an amount sufficient to extinguish that lien. Any excess proceeds shall next be paid to the manufacturer in an amount sufficient to extinguish the manufacturer's lien. Any remainder shall be paid to the customer.

(f) *Federal law.* A special tool builder or manufacturer may not sell a special tool under par. (d) if the sale would violate the rights of a manufacturer or customer under federal bankruptcy, patent, or copyright law.

(END)

INSERT 1A:

Under current law, a plastics fabricator is granted a lien on toolings in the fabricator's possession that belong to a customer for amounts that the customer owes the fabricator for the toolings or for plastic fabrication work. Current law also allows, under certain circumstances, a plastics or cast metal molder to dispose of forms provided by a customer that the customer has not claimed within 3 years after the molder's last use of the form. This bill creates similar provisions for "special tools", which the bill defines as any tool, die, jig, gauge, gauging fixture, metal casting, pattern, forging, machinery, ferrous or nonferrous machine part, or intellectual property used for the purpose of designing, developing, manufacturing, assembling, or fabricating a metal part. ✓ STEP

Special tool builder's lien. Under the bill, a "special tool builder" who satisfies certain requirements is granted a lien in the amount that a "manufacturer" or "customer" owes the special tool builder for designing, developing, manufacturing, assembling, repairing, or modifying a special tool. The bill defines "special tool builder" as a person who makes a special tool, a "manufacturer" as a person who uses a special tool in a manufacturing process, and a "customer" as a person who does any of the following: 1) causes a special tool builder to make a special tool; 2) orders a product from a manufacturer that is produced with a special tool; or 3) causes a manufacturer to use a special tool. ✓

The bill grants a special tool builder a lien if the special tool builder permanently records the builder's name and address on the special tool and files a financing statement for the special tool under the state's version of Article IX of the Uniform Commercial Code ("Article IX"), which covers secured transactions. The lien is attached on the date that both of the foregoing requirements are satisfied, which means that on that date the special tool builder has lien rights that may be enforced against the manufacturer or customer. The lien is also perfected on that date, which means that the special tool builder's lien has priority over other liens and security interests in the special tool that are perfected after that date. The bill provides that the lien remains valid until either: 1) the manufacturer or customer pays the special tool builder the amount for which the lien is claimed; or 2) the financing statement is terminated under Article IX. ✓ STEP

The bill allows a special tool builder to enforce a lien by any available judicial procedure, or by taking possession of the special tool without judicial process, but only if the taking is done without breach of the peace. Before enforcing the lien, a special tool builder must provide written notice, delivered personally or by registered mail, to the manufacturer or customer that the special tool builder demands payment for the amount claimed. (If the claim is against both the manufacturer and customer, the special tool builder must notify both.) If the special tool builder is not paid within 90 days after receipt of the notice, the special tool builder may enforce the lien. However, if mailed notice is returned as undeliverable, the bill requires the special tool builder to publish a legal notice before the builder may enforce the lien.

Manufacturer's lien. The bill also grants a lien to a manufacturer in a special tool belonging to a customer that a customer causes the manufacturer to use. The amount of the lien is the amount due to the manufacturer from the customer for any work performed with the special tool or for making or improving the special tool. The manufacturer is allowed to retain possession of the special tool until the amount due is paid. The bill allows a manufacturer to enforce a lien by selling the special tool at public auction, but only after satisfying written notice and legal publication requirements that are similar to the requirements described above for special tool builders. Also, the bill prohibits a public auction if the customer claims that any product produced by the manufacturer with the special tool did not comply with the quality and quantity ordered by the customer. A public auction may not take place until such a claim is resolved. If there is a public auction, the proceeds are first paid to any prior holder of a lien in the special tool (such as, for example, a special tool builder) and then paid to the manufacturer to satisfy the manufacturer's lien. Any remaining proceeds are paid to the customer.

Right to destroy special tools. Unless otherwise agreed in writing by a manufacturer and a customer, the bill allows a manufacturer, under certain circumstances, to destroy a customer's special tool that the manufacturer has used to produce parts ordered by the customer or that the customer has caused the manufacturer to use. A manufacturer may destroy a customer's special tool if all of the following are satisfied: 1) the special tool has been in the manufacturer's possession for one year after the manufacturer's last use of the tool; 2) the customer has not claimed possession of the special tool during that year; and 3) the manufacturer complies with requirements specified in the bill for providing notice to the customer 120 days before the manufacturer intends to destroy the tool. If the notice requirements are satisfied and the customer has not claimed possession of the special tool or agreed to arrangements for storage of the special tool, the bill transfers the customer's interest in the tool to the manufacturer for the purpose of destroying the tool.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0927/1dn

MDK:.....

Wlj

Rep. Jeskewitz:

Please review this bill to make sure it achieves your intent. In particular, please note the following:

1. Here are the differences between this bill and the previous version:

a. This bill removes the public auction provisions that applied to a special tool builder's enforcement of a special tool builder's lien on a tool that is in the possession of a manufacturer.

b. This bill adds requirements for providing notice by legal publication in the event that registered mail is returned as undeliverable. See proposed s. 779.485 (2) (c) 2. and (3) (a) 1. d. and (c) 2.

c. Proposed s. 779.485 (2) (a) 4., which concerns termination of a special tool builder's lien, eliminates the references to receipts of verified statements that claims have been paid.

d. Proposed s. 779.485 (3) (b) refers to "work" performed with a special tool, rather than "special work". "Special work" is not defined and may create confusion as to its meaning.

e. After further reflection, I eliminated the language in the previous version that prohibited sales of tools at public auction if the sale violates rights under federal bankruptcy, patent, or copyright law. If federal law prohibits such sales, then it isn't necessary for state law to repeat the prohibition.

2. A question arose about the applicability of the bill to multi-state transactions. In general, a court's ability to enforce a Wisconsin statute against a person depends upon the person's contacts in this state. The first lien created by the bill is a manufacturer's lien on a tool of a customer that is in the possession of the manufacturer. More than likely, only manufacturers located in Wisconsin will seek to enforce this lien on tools located in Wisconsin. Even for customers located outside Wisconsin, there are probably sufficient contacts in this state for a court to have jurisdiction to enforce the lien. The 2nd lien created by the bill is a special tool builder's lien on a tool built for a manufacturer or customer that is in the possession of a manufacturer. If the manufacturer and the tool are located in this state, there are most likely sufficient

special tool builder
manufacturer

contacts for a Wisconsin^{to} to enforce the lien. However, if the manufacturer and the tool are located outside the state, a court will have jurisdiction to enforce the lien only if the court determines that the manufacturer has sufficient contacts in this state. The result will depend on the facts of a particular case (such as, for example, whether the contracting took place in or outside Wisconsin).

3. You asked whether the bankruptcy of a manufacturer who possess^{es} a special tool would affect the rights of a special tool builder who has a lien on the tool. I have identified the following⁽²⁾ issues that may affect a special tool builder's rights under the bill. ^(SP)

a. The first issue is whether the lien would be recognized as valid in a bankruptcy proceeding. In general, federal bankruptcy law defers to state law on this issue. If there is a valid lien on property under the applicable state law, a bankruptcy trustee is also subject to the lien. (However, as discussed below, under certain circumstances, a trustee may be allowed under federal bankruptcy law to invalidate a lien that is otherwise valid under state law.) If the manufacturer files for bankruptcy in this state, a federal bankruptcy court would most likely apply Wisconsin law. See *In re Payless Cashways*, 203 F.3d 1081, 1083 (8th Cir., 2000). If the special tool builder complied with the bill, the lien would most likely be recognized in the bankruptcy proceeding. However, if the manufacturer files for bankruptcy in another state, the federal court would apply the "choice of law" requirements of that state to determine which state's law applies to the property rights in the special tool. Because states have different "choice of law" tests, I can't answer whether another state would determine that Wisconsin law applies to the special tool. However, "choice of law" tests generally look to the nature and extent of contacts in a state. Therefore, the issue may be similar to the issues described in item 2^{above}.

b. The^{2nd} issue is whether a bankruptcy trustee is allowed to invalidate an otherwise valid lien. Under federal bankruptcy law, a trustee may, under certain circumstance, "avoid" (i.e., invalidate) certain liens created by statute, which are referred to as "statutory liens". See 11 USC s. 545. A trustee can such @ avoid a statutory lien if the lien has the following characteristics: 1) the lien arises only when the debtor becomes insolvent or otherwise experiences financial difficulties; and 2) the lien is not a true property interest because it does not survive a transfer of the lien property to a bona fide purchaser. See G. Treister, *Fundamentals of Bankruptcy Law*, 5th Ed. at p. 171. Because the special tool builder's lien does not have these characteristics, I think that a bankruptcy trustee would not be allowed to invalidate the lien. Nevertheless, given the complexity of federal bankruptcy law, you may want to obtain the opinion of a bankruptcy attorney on this issue.

If you have any questions or redraft instructions, please contact me.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0927/1dn
MDK:wlj:pg

March 7, 2005

Rep. Jeskewitz:

Please review this bill to make sure it achieves your intent. In particular, please note the following:

1. Here are the differences between this bill and the previous version:

a. This bill removes the public auction provisions that applied to a special tool builder's enforcement of a special tool builder's lien on a tool that is in the possession of a manufacturer.

b. This bill adds requirements for providing notice by legal publication in the event that registered mail is returned as undeliverable. See proposed s. 779.485 (2) (c) 2. and (3) (a) 1. d. and (c) 2.

c. Proposed s. 779.485 (2) (a) 4., which concerns termination of a special tool builder's lien, eliminates the references to receipts of verified statements that claims have been paid.

d. Proposed s. 779.485 (3) (b) refers to "work" performed with a special tool, rather than "special work." "Special work" is not defined and may create confusion as to its meaning.

e. After further reflection, I eliminated the language in the previous version that prohibited sales of tools at public auction if the sale violates rights under federal bankruptcy, patent, or copyright law. If federal law prohibits such sales, then it isn't necessary for state law to repeat the prohibition.

2. A question arose about the applicability of the bill to multistate transactions. In general, a court's ability to enforce a Wisconsin statute against a person depends upon the person's contacts in this state. The first lien created by the bill is a manufacturer's lien on a tool of a customer that is in the possession of the manufacturer. More than likely, only manufacturers located in Wisconsin will seek to enforce this lien on tools located in Wisconsin. Even for customers located outside Wisconsin, there are probably sufficient contacts in this state for a court to have jurisdiction to enforce the lien. The second lien created by the bill is a special tool builder's lien on a tool built for a manufacturer or customer that is in the possession of a manufacturer. If the manufacturer and the tool are located in this state, there are most likely sufficient

contacts for a Wisconsin special tool builder to enforce the lien. However, if the manufacturer and the tool are located outside the state, a court will have jurisdiction to enforce the lien only if the court determines that the manufacturer has sufficient contacts in this state. The result will depend on the facts of a particular case (such as, for example, whether the contracting took place in or outside Wisconsin).

3. You asked whether the bankruptcy of a manufacturer who possesses a special tool would affect the rights of a special tool builder who has a lien on the tool. I have identified the following two issues that may affect a special tool builder's rights under the bill.

a. The first issue is whether the lien would be recognized as valid in a bankruptcy proceeding. In general, federal bankruptcy law defers to state law on this issue. If there is a valid lien on property under the applicable state law, a bankruptcy trustee is also subject to the lien. (However, as discussed below, under certain circumstances, a trustee may be allowed under federal bankruptcy law to invalidate a lien that is otherwise valid under state law.) If the manufacturer files for bankruptcy in this state, a federal bankruptcy court would most likely apply Wisconsin law. See *In re Payless Cashways*, 203 F.3d 1081, 1083 (8th Cir., 2000). If the special tool builder complied with the bill, the lien would most likely be recognized in the bankruptcy proceeding. However, if the manufacturer files for bankruptcy in another state, the federal court would apply the "choice of law" requirements of that state to determine which state's law applies to the property rights in the special tool. Because states have different "choice of law" tests, I can't answer whether another state would determine that Wisconsin law applies to the special tool. However, "choice of law" tests generally look to the nature and extent of contacts in a state. Therefore, the issue may be similar to the issues described in item 2 above.

b. The second issue is whether a bankruptcy trustee is allowed to invalidate an otherwise valid lien. Under federal bankruptcy law, a trustee may, under certain circumstance, "avoid" (i.e., invalidate) certain liens created by statute, which are referred to as "statutory liens." See 11 USC 545. A trustee can avoid such a statutory lien if the lien has the following characteristics: 1) the lien arises only when the debtor becomes insolvent or otherwise experiences financial difficulties; and 2) the lien is not a true property interest because it does not survive a transfer of the lien property to a bona fide purchaser. See G. Treister, *Fundamentals of Bankruptcy Law*, 5th Ed. at p. 171. Because the special tool builder's lien does not have these characteristics, I think that a bankruptcy trustee would not be allowed to invalidate the lien. Nevertheless, given the complexity of federal bankruptcy law, you may want to obtain the opinion of a bankruptcy attorney on this issue.

If you have any questions or redraft instructions, please contact me.

Mark D. Kunkel
Senior Legislative Attorney
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April 5, 2005 – Offered by COMMITTEE ON JUDICIARY.

2 **1.** Page 5, line 14: delete “machine” and substitute “machined”.

3 **2.** Page 5, line 25: after “state” insert “, or other traceable identification”.

4 (END)

2005 - 2006 LEGISLATURE

LRB-0927/1

MDK:wlj:pg

D-note

2005 BILL

WED
4/13

stop

RM
HAS
BEEN
RUN

Regen

- 1 AN ACT *to repeal and recreate* 779.48 (title); and *to create* 779.485 of the
2 statutes; **relating to:** liens for metal fabrication tool builders and metal parts
3 manufacturers and destruction of metal fabrication tools.

Analysis by the Legislative Reference Bureau

Under current law, a plastics fabricator is granted a lien on toolings in the fabricator's possession that belong to a customer for amounts that the customer owes the fabricator for the toolings or for plastic fabrication work. Current law also allows, under certain circumstances, a plastics or cast metal molder to dispose of forms provided by a customer that the customer has not claimed within three years after the molder's last use of the form. This bill creates similar provisions for "special tools," which the bill defines as any tool, die, jig, gauge, gauging fixture, metal casting, pattern, forging, machinery, ferrous or nonferrous ~~machine~~ part, or intellectual property used for the purpose of designing, developing, manufacturing, assembling, or fabricating a metal part.

Special tool builder's lien. Under the bill, a "special tool builder" who satisfies certain requirements is granted a lien in the amount that a "manufacturer" or "customer" owes the special tool builder for designing, developing, manufacturing, assembling, repairing, or modifying a special tool. The bill defines "special tool builder" as a person who makes a special tool, a "manufacturer" as a person who uses a special tool in a manufacturing process, and a "customer" as a person who does any of the following: 1) causes a special tool builder to make a special tool; 2) orders a product from a manufacturer that is produced with a special tool; or 3) causes a manufacturer to use a special tool.

machined

BILL

The bill grants a special tool builder a lien if the special tool builder permanently records the builder's name and address on the special tool and files a financing statement for the special tool under the state's version of Article IX of the Uniform Commercial Code (Article IX), which covers secured transactions. The lien is attached on the date that both of the foregoing requirements are satisfied, which means that on that date the special tool builder has lien rights that may be enforced against the manufacturer or customer. The lien is also perfected on that date, which means that the special tool builder's lien has priority over other liens and security interests in the special tool that are perfected after that date. The bill provides that the lien remains valid until either: 1) the manufacturer or customer pays the special tool builder the amount for which the lien is claimed; or 2) the financing statement is terminated under Article IX.

The bill allows a special tool builder to enforce a lien by any available judicial procedure, or by taking possession of the special tool without judicial process, but only if the taking is done without breach of the peace. Before enforcing the lien, a special tool builder must provide written notice, delivered personally or by registered mail, to the manufacturer or customer that the special tool builder demands payment for the amount claimed. (If the claim is against both the manufacturer and customer, the special tool builder must notify both.) If the special tool builder is not paid within 90 days after receipt of the notice, the special tool builder may enforce the lien. However, if mailed notice is returned as undeliverable, the bill requires the special tool builder to publish a legal notice before the builder may enforce the lien.

Manufacturer's lien. The bill also grants a lien to a manufacturer in a special tool belonging to a customer that a customer causes the manufacturer to use. The amount of the lien is the amount due to the manufacturer from the customer for any work performed with the special tool or for making or improving the special tool. The manufacturer is allowed to retain possession of the special tool until the amount due is paid. The bill allows a manufacturer to enforce a lien by selling the special tool at public auction, but only after satisfying written notice and legal publication requirements that are similar to the requirements described above for special tool builders. Also, the bill prohibits a public auction if the customer claims that any product produced by the manufacturer with the special tool did not comply with the quality and quantity ordered by the customer. A public auction may not take place until such a claim is resolved. If there is a public auction, the proceeds are first paid to any prior holder of a lien in the special tool (such as, for example, a special tool builder) and then paid to the manufacturer to satisfy the manufacturer's lien. Any remaining proceeds are paid to the customer.

Right to destroy special tools. Unless otherwise agreed in writing by a manufacturer and a customer, the bill allows a manufacturer, under certain circumstances, to destroy a customer's special tool that the manufacturer has used to produce parts ordered by the customer or that the customer has caused the manufacturer to use. A manufacturer may destroy a customer's special tool if all of the following are satisfied: 1) the special tool has been in the manufacturer's possession for one year after the manufacturer's last use of the tool; 2) the customer has not claimed possession of the special tool during that year; and 3) the

10 other
traceable
traceable
identification

BILL

manufacturer complies with requirements specified in the bill for providing notice to the customer 120 days before the manufacturer intends to destroy the tool. If the notice requirements are satisfied and the customer has not claimed possession of the special tool or agreed to arrangements for storage of the special tool, the bill transfers the customer's interest in the tool to the manufacturer for the purpose of destroying the tool.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 779.48 (title) of the statutes is repealed and recreated to read:

2 **779.48 (title) Enforcement.**

3 **SECTION 2.** 779.485 of the statutes is created to read:

4 **779.485 Special tools. (1) DEFINITIONS.** In this section:

5 (a) "Customer" means a person who does any of the following:

6 1. Causes a special tool builder to design, develop, manufacture, assemble, or
7 otherwise make a special tool.

8 2. Orders a product from a manufacturer that is produced with a special tool
9 or causes a manufacturer to use a special tool.

10 (b) "Intellectual property" means a design, program, or process.

11 (c) "Manufacturer" means a person who uses a special tool as part of the
12 person's manufacturing process.

13 (d) "Manufacturer's lien" means a lien described in sub. (3) (b).

14 (e) "Special tool" means a tool, die, jig, gauge, gauging fixture, metal casting,
15 pattern, forging, machinery, ferrous or nonferrous ~~machine~~ part, or intellectual
16 property used for the purpose of designing, developing, manufacturing, assembling,
17 or fabricating a metal part.

machined ✓

BILL

1 (f) "Special tool builder" means a person who designs, develops, manufactures,
2 fabricates, or assembles a special tool.

3 (g) "Special tool builder's lien" means a lien described in sub. (2) (a) 1.

4 (2) SPECIAL TOOL BUILDERS. (a) *Lien*. 1. A special tool builder who does all of
5 the following has a lien on a special tool in the amount that a customer or
6 manufacturer owes the special tool builder for designing, developing,
7 manufacturing, fabricating, assembling, repairing, or modifying the special tool:

8 a. Permanently records on the special tool the special tool builder's name, street
9 address, city, and state, *or other traceable identification*

10 b. Files a financing statement for the special tool under subch. V of ch. 409.

11 2. A special tool builder's lien attaches and is perfected on the date that both
12 of the requirements specified in subd. 1. a. and b. are satisfied.

13 3. A special tool builder retains a special tool builder's lien even if the special
14 tool builder does not have physical possession of the special tool for which the lien
15 is claimed.

16 4. A special tool builder's lien remains valid until the first of any of the following
17 occurs:

18 a. The customer or manufacturer pays the special tool builder the amount for
19 which the special tool builder's lien is claimed.

20 b. The financing statement is terminated.

21 (b) *Priority*. An attached and perfected special tool builder's lien has priority
22 over any other lien that subsequently attaches to the special tool.

23 (c) *Enforcement*. 1. A special tool builder may not enforce a special tool
24 builder's lien unless the builder provides notice in writing to the customer,
25 manufacturer, or both that owes the builder the amount for which the special tool

BILL

1 builder's lien is claimed. The notice shall be delivered personally or by registered
2 mail, return receipt requested, to the last-known address of the customer,
3 manufacturer, or both and shall state that the builder is claiming a lien for the
4 amount that customer, manufacturer, or both owes the special tool builder for
5 designing, developing, manufacturing, fabricating, assembling, repairing, or
6 modifying the special tool and that the builder demands payment for the amount.
7 Except as provided in subd. 2., if the special tool builder is not paid the amount
8 claimed within 90 days after either the customer or, if applicable, the manufacturer
9 receives the notice, whichever is later, the builder has the right to possession of the
10 special tool and the builder may enforce the right by any available judicial procedure
11 or by taking possession of the special tool without judicial process, but only if the
12 taking is done without breach of the peace.

13 2. If the postal service returns any notice required under subd. 1. as
14 undeliverable, the special tool builder may enforce the right to possession under
15 subd. 1. no sooner than 90 days after the special tool builder publishes, under ch. 985,
16 a class 1 notice of the intended enforcement of the right to possession in a newspaper
17 of general circulation in the place where the special tool is last known to be located
18 and in the place of the last-known address of any person for which the postal service
19 returns a notice as undeliverable.

20 **(3) MANUFACTURERS.** (a) *Transfer of interest.* 1. Unless otherwise agreed by
21 a customer and manufacturer in writing, all rights, title, and interest of a customer
22 in a special tool that a manufacturer has used to produce parts ordered by the
23 customer or that the customer has caused a manufacturer to use are transferred to
24 the manufacturer for the purpose of destroying the special tool, if all of the following
25 are satisfied:

BILL

1 a. The special tool has been in the possession of the manufacturer during the
2 one-year period beginning after the manufacturer's last use of the special tool.

3 b. The customer has not claimed possession of the special tool before the
4 expiration of the one-year period specified in subd. 1. a.

5 c. After the expiration of the one-year period specified in subd. 1. a., the
6 manufacturer provides written notice by registered mail, return receipt requested,
7 to an address designated in writing by the customer or, if the customer has made no
8 such designation, to the customer's last-known address, that indicates that the
9 manufacturer intends to terminate the customer's rights, title, and interest in the
10 special tool and transfer those rights, title, and interest to the manufacturer as
11 provided in this paragraph.

12 d. The customer has not, within 120 days after the date that the manufacturer
13 receives the return receipt of notice specified in subd. 1. c. or within 120 days after
14 the customer provides notice if no return receipt is received within that period,
15 claimed possession of the special tool or agreed to other arrangements with the
16 manufacturer for storage of the special tool.

17 2. The one-year period specified in subd. 1. a. applies retroactively to special
18 tools last used before the effective date of this subdivision [revisor inserts date].

19 3. This paragraph does not apply to a special tool that is titled to, and in the
20 possession of, a manufacturer. This paragraph may not be construed to grant a
21 customer any right, title, or interest in a special tool.

22 (b) *Lien*. A manufacturer has a lien on any special tool in the manufacturers'
23 possession belonging to a customer for the amount due the manufacturer from the
24 customer for work performed with the special tool or for making or improving the

BILL

1 special tool. A manufacturer may retain possession of the special tool until the
2 amount due is paid.

3 (c) *Enforcement.* 1. A manufacturer may not enforce a manufacturers' lien
4 unless the manufacturer provides notice in writing to the customer, delivered
5 personally or by registered mail to the last-known address of the customer, that
6 states that the manufacturer is claiming a lien for the amount due described in par.

7 (b). Except as provided in subd. 2., if the manufacturer is not paid the amount due
8 within 90 days after the customer receives the notice, and if the manufacturer is still
9 in possession of the special tool, the manufacturer may sell the special tool at public
10 auction under par. (d).

11 2. If the postal service returns a notice under subd. 1. as undeliverable and if
12 the manufacturer is still in possession of the special tool, the manufacturer may sell
13 the special tool at public auction under par. (d) no sooner than 90 days after the
14 special tool builder publishes, under ch. 985, a class 1 notice of the sale in a
15 newspaper of general circulation in the place of the last-known address of the
16 customer.

17 (d) *Public auction.* 1. A manufacturer may not sell a special tool at public
18 auction unless the manufacturer has provided, by registered mail, return receipt
19 requested, the customer and any other person, including a special tool builder, who
20 has perfected by filing a security interest in the special tool, a notice that includes
21 all of the following:

22 a. A statement that the manufacturer intends to sell the special tool no sooner
23 than 60 days after receipt of the notice.

24 b. A description of the special tool.

25 c. The time and place of the public auction.

BILL

d. An itemized statement of the amount for which the manufacturer's lien is claimed.

e. A statement that any product produced by the manufacturer with the special tool complies with the quality and quantity ordered by the customer.

2. Except as provided in subd. 3., a manufacturer may sell a special tool at public auction no sooner than 60 days after the customer's or other person's receipt of the notice specified in subd. 1., whichever is later, except that, if the postal service returns any of the notices as undeliverable, the manufacturer may sell the special tool no sooner than 60 days after the manufacturer publishes, under ch. 985, a class 1 notice of the intended sale, that includes the information specified in subd. 1., in a newspaper of general circulation in the place where the manufacturer is holding the special tool for sale, in the place of the customer's last-known address, and in the place of the other person's last-known address.

3. If a customer disagrees with the statement specified in subd. 1. e. that is included in a notice, the customer may notify the manufacturer of the disagreement in writing by registered mail, return receipt requested. If a manufacturer receives a notification under this subdivision before the date of the public auction, the manufacturer may not sell the special tool at public auction until after the disagreement is resolved.

(e) *Proceeds.* The proceeds of a sale of a special tool under par. (d) shall, if applicable, first be paid to a prior lienholder who has perfected a lien in an amount sufficient to extinguish that lien. Any excess proceeds shall next be paid to the manufacturer in an amount sufficient to extinguish the manufacturer's lien. Any remainder shall be paid to the customer.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0927/2dn

MDK:.....

WLj

Rep. Jeskewitz:

This version incorporates AA2 to AB 278.

⊖ ✓
^
Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0927/2dn
MDK:wlj:pg

April 11, 2005

Rep. Jeskewitz:

This version incorporates AA2 to AB-278.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

Basford, Sarah

From: Matthews, Pam
Sent: Wednesday, September 07, 2005 1:31 PM
To: LRB.Legal
Subject: Draft review: LRB 05-0927/2 Topic: Special tools liens

It has been requested by <Matthews, Pam> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-0927/2 Topic: Special tools liens